

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ROBERTO LOPEZ PEREZ,

Plaintiff,

v.

ANDREW M. SAUL,  
*Commissioner of Social Security*,<sup>1</sup>

Defendant.  
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**AZRACK, United States District Judge:**

The Court notes the following points from the record. Plaintiff attained the age of 50 on March 15, 2017. Based on the ALJ's finding that Plaintiff could perform a reduced range of light work with certain specified limitations, it appears that Plaintiff would be entitled to a finding of disability pursuant to the Medical and Vocational Guidelines on or about March 14, 2017, his fiftieth birthday. However, Plaintiff's date last insured is December 31, 2016, which falls approximately 75 days prior to his fiftieth birthday.

The regulations at 20 C.F.R. § 404.1563(b) and 20 C.F.R. § 416.963(b) direct that the age categories shall not be applied "mechanically in a borderline situation." Courts in the Second Circuit have generally recognized that although the regulations do not state an "outer limit" with regard to a borderline situation, a period of less than three months appears to be within the limits. See, e.g., Gravel v. Barnhard, 360 F. Supp.2d 442, 446 n.8 (N.D.N.Y. 2008); Smolinski v. Astrue, No. 07-CV-386, 2008 WL 4287819, at \*4 (W.D.N.Y. Sept. 17, 2008); Davis v. Shalala, 883 F. Supp. 828, 838–39 (E.D.N.Y. 1995).

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<sup>1</sup> Andrew M. Saul has been substituted for Carolyn W. Colvin, who was the Acting Commissioner of Social Security when this suit was filed.

FILED  
CLERK

7/17/2019 3:35 pm  
For Online Publication Only

U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE

**ORDER**  
16-CV-838 (JMA)

In light of the above, the parties are hereby ORDERED to discuss whether they would be willing to stipulate to a remand of this case with a direction that Plaintiff be found disabled as of December 31, 2016 pursuant to the Medical and Vocational Guidelines. The parties are directed to inform the Court by August 16, 2019 if they are willing to agree to such a stipulation.

**SO ORDERED.**

Dated: July 17, 2019  
Central Islip, New York

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/s/ (JMA)  
JOAN M. AZRACK  
UNITED STATES DISTRICT JUDGE